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8 Attorneys for Defendant,  
ZYNGA GAME NETWORK, INC.

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 REBECCA SWIFT, individually, on behalf of the  
13 general public, and all others similarly situated,

14 Plaintiff,

15 v.

16 ZYNGA GAME NETWORK, INC.; and  
17 FACEBOOK, INC.,

18 Defendants.

Case No.: CV 09-5443 SBA

[PROPOSED] ORDER GRANTING  
DEFENDANT ZYNGA GAME  
NETWORK, INC.'S MOTION TO  
DISMISS CLASS ACTION COMPLAINT

Date: May 25, 2010  
Time: 1:00 p.m.  
Judge: Hon. Sandra B. Armstrong  
Ctm.: 1

Complaint Filed: November 17, 2009

20  
21 Defendant Zynga Game Network, Inc. ("Zynga")'s Motion to Dismiss the Class Action  
22 Complaint of Plaintiff Rebecca Swift came on regularly for hearing before this Court on May 25,  
23 2010. Having read and considered all the papers, oral arguments of counsel, and good cause  
24 appearing therefore, the Court orders that:

25 Zynga's Motion to Dismiss is granted pursuant to Federal Rule of Civil Procedure 12(b)(6)  
26 for failure to state a claim upon which relief can be granted. Plaintiff's claims seek to hold Zynga  
27 liable for publishing advertising content that was created and developed by third party advertisers.  
28 Section 230 of the Communications Decency Act of 1996 (the "CDA") immunizes interactive

1 computer services such as Zynga against such claims. 47 U.S.C. § 230; *Goddard v. Google, Inc.*,  
2 640 F.Supp.2d 1193 (N.D.Cal. 2009). Plaintiff fails to allege facts sufficient to plausibly suggest  
3 that Zynga created or developed any of the third party advertisements that allegedly caused  
4 Plaintiff's harm. See *Nemet Chevrolet, Ltd. v. ConsumerAffairs.com*, \_\_ F.3d \_\_, 2009 WL  
5 5126224 (4th Cir. 2009) (citing *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1951 (2009) and *Fair Housing*  
6 *Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008)).

7 Moreover, Plaintiff's claims also fail because they are all grounded in fraud, but are not pled  
8 with particularity. Any causes of action alleging that a defendant engaged in a fraudulent course of  
9 conduct must satisfy the particularity requirement of Federal Rule of Civil Procedure 9(b). *Kearns*  
10 *v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009). Plaintiff seeks to hold Zynga liable for  
11 allegedly conspiring with, or aiding and abetting, the allegedly misleading and fraudulent conduct of  
12 third-party advertisers. Plaintiff alleges that Zynga "actively encouraged Plaintiff to accept the  
13 advertisement at issue" (Complaint, ¶ 25). But none of Plaintiff's factual allegations of the  
14 Complaint – even if proven – would support the notion that Zynga engaged in any misleading  
15 conduct with respect to the specific advertising at issue. The Complaint does not identify any of  
16 "the who, what, when, where, and how" of the misconduct" that Zynga allegedly committed. *Vess*  
17 *v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d  
18 616, 627 (9th Cir. 1997)). Plaintiff's conclusory allegations are not pled with particularity and are  
19 not sufficient to withstand a motion to dismiss.

20 THEREFORE, IT IS HEREBY ORDERED THAT:

21 Zynga's motion to dismiss is granted [with prejudice/with leave to amend].  
22

23 **IT IS SO ORDERED.**

24  
25 Date: \_\_\_\_\_, 2010

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The Honorable Saundra Brown Armstrong  
United States District Judge